

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARCELORMITTAL PLATE LLC, et al.,

Plaintiffs,

Case No. 19-13527-LVP-APP

v.

Hon. Linda V. Parker

LAPEER INDUSTRIES, INC., et al.,

Mag. Anthony P. Patti

Defendants.

**PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT AGAINST
DEFENDANTS BRENTWOOD ADVISORY GROUP, LLC AND S&S
HOLDINGS, LLC**

Pursuant to Fed. R. Civ. P. 55, Plaintiffs ArcelorMittal Plate LLC and (“ArcelorMittal Plate”) and ArcelorMittal USA LLC (“ArcelorMittal USA”) (collectively “ArcelorMittal”) moves the Court for entry of default judgment against Defendants Brentwood Advisory Group, LLC (“Brentwood”) and S&S Holdings, LLC, (“S&S Holdings”). In support of its Motion, ArcelorMittal incorporates by reference and relies upon the laws, facts, and arguments set for in the accompanying brief.

The undersigned counsel for ArcelorMittal certifies that he did not seek the concurrence of Defendants Brentwood and S&S Holdings in the relief requested by this motion in accordance with Local Rule 7.1 because they have not answered or

otherwise defended in this action and a Clerk's Entry of Default was requested and entered as to each of them.

Dated: January 9, 2020

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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ARCELORMITTAL PLATE LLC, et al.,

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Case No. 19-13527-LVP-APP

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Hon. Linda V. Parker

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Defendants.

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR DEFAULT
JUDGMENT AGAINST DEFENDANTS BRENTWOOD ADVISORY
GROUP, LLC AND S&S HOLDINGS, LLC**

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE PRESENTED1

CONTROLLING AUTHORITY2

INTRODUCTION3

ARGUMENT3

I. The Court Should Enter Default Against Brentwood and S&S Holdings.....3

II. The Court Should Enter Judgment in ArcelorMittal’s Favor Against
Brentwood and S&S Holdings and Award ArcelorMittal Damages in
Excess of \$3.7 Million.....5

CONCLUSION7

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Ford Motor Co. v. Cross</i> , 441 F. Supp. 2d 837 (E.D. Mich. 2006)	4
<i>United States v. Conces</i> , 507 F.3d 1028 (6th Cir. 2007)	4

Statutes

28 U.S.C. § 1332(a)	4
28 U.S.C. § 1391(a)	5

STATEMENT OF ISSUE PRESENTED

Should the Court enter a judgement of default against Defendants Brentwood Advisory Group, LLC (“Brentwood”) and S&S Holdings, LLC, (“S&S Holdings”) based on Plaintiffs ArcelorMittal Plate LLC (“ArcelorMittal Plate”) and ArcelorMittal USA LLC (“ArcelorMittal USA”) First Amended Complaint filed on December 17, 2019, given that Brentwood and S&S Holdings failed to answer the complaint within the time prescribed by the Federal Rules of Civil Procedure.

Plaintiffs’ Response: Yes.

CONTROLLING AUTHORITY

Fed. R. Civ. P. 55

United States v. Conces, 507 F.3d 1028 (6th Cir. 2007)

INTRODUCTION

Plaintiffs ArcelorMittal Plate LLC (“ArcelorMittal Plate”) and ArcelorMittal USA LLC (“ArcelorMittal USA”) (collectively “ArcelorMittal”) submits this brief in support of its Motion for Default Judgement against Defendants Brentwood Advisory Group, LLC (“Brentwood”) and S&S Holdings, LLC, (“S&S Holdings”). ArcelorMittal asks this Court to enter default judgment against Brentwood and S&S Holdings and award \$3,752,504.20 in damages; interest at the applicable rate until judgment is paid and satisfied in full; the costs of this action; attorneys’ fees; and for such other and further relief as the Court deems just and proper.

ARGUMENT

I. The Court Should Enter Default Against Brentwood and S&S Holdings.

On November 27, 2019, Plaintiffs filed their Complaint in the above captioned Matter. (Doc. 1.) On December 6, 2019, Brentwood and S&S Holdings were properly served with the Summons and Complaint. (Docs. 14–15.) On December 17, 2019, Plaintiffs filed their First Amended Complaint in the above captioned Matter. (Doc. 18.) On that same date (December 17), Brentwood and S&S Holdings was properly served with the First Amended Complaint. (Doc. 18, Amend. Compl. Cert. of Serv.)

To date, both Brentwood and S&S Holdings have failed to respond to the First Amended Complaint within the time prescribed by the Federal Rules of Civil Procedure. In addition, neither Brentwood nor S&S Holdings have filed an

appearance or an answer, and the deadline to do so has passed. Further, neither Brentwood nor S&S Holdings has requested an extension of time within which to file a response to the First Amended Complaint. Finally, neither Brentwood nor S&S Holdings is an infant, incompetent, or in military service.

On January 6, 2020, ArcelorMittal filed a request for a clerk's entry of default against both Brentwood and S&S Holdings. (Doc. 23.) On January 7, 2020, the Clerk entered default on the docket against Brentwood and S&S Holdings on January 7, 2020. (Docs. 25, 26.)

The default concedes the truth of the allegations of the First Amended Complaint as to Brentwood's and S&S Holdings' liability. *See United States v. Conces*, 507 F.3d 1028, 1038 (6th Cir. 2007); *see also Ford Motor Co. v. Cross*, 441 F. Supp. 2d 837, 848 (E.D. Mich. 2006) ("When a defendant is in default, the well pleaded factual allegations in the Complaint, except those relating to damages, are taken as true.").

Accordingly, ArcelorMittal hereby respectfully requests that this Court enter default judgment against Brentwood and S&S Holdings pursuant to Rule 55 of the Federal Rules of Civil Procedure. The Court has jurisdiction because there is a complete diversity of citizenship between Plaintiffs and Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332(a). (Doc. 18, Amend. Compl. ¶¶ 3–10.) Further, venue in this Court

is proper pursuant to 28 U.S.C. § 1391(a) in that a substantial part of the events or omissions giving rise to the claim occurred within this judicial district and Defendants are subject to personal jurisdiction within this judicial district.

II. The Court Should Enter Judgment in ArcelorMittal’s Favor Against Brentwood and S&S Holdings and Award ArcelorMittal Damages in Excess of \$3.7 Million.

In light of Brentwood and S&S Holdings’ default, Brentwood and S&S Holdings concede that they are in default under the Guaranties they executed on November 8, 2012, for their failure to pay the amounts due thereunder. (Doc. 18, Amend. Compl. ¶¶ 20, 21, 24–31; Aff. ¶ 12.)¹ Under the Guaranties, Brentwood and S&S Holdings guaranteed payment of the amounts due and owing under the Invoices² upon default by Defendant Lapeer Industries, Inc. (“Lapeer”). (Doc. 18, Amend. Compl. ¶¶ 20, 21; Aff. ¶ 12.) The Invoices are governed by ArcelorMittal’s Terms & Conditions of Sale (the “Agreements”), as expressly noted in each of the Invoices issued to Lapeer. (Doc. 18, Amend. Compl. ¶ 16; *see* Aff. Exs. 1–2.) Pursuant to the Agreements, Lapeer is liable for all collection costs, including

¹ “Aff.” refers to the Affidavit of David E. Pilat in Support of Plaintiffs’ Motion for Default Judgment Against Defendants Brentwood Advisory Group, LLC and S&S Holdings, LLC.

² “Invoices” refers to two-hundred-and-three (203) receivable documents dated May 23, 2018 through May 3, 2019, ArcelorMittal USA billed Lapeer for products provided by ArcelorMittal Plate pursuant to purchase orders issued by Lapeer at its specific instance and request. (Doc. 18, Amend. Compl. ¶ 15; Aff. ¶ 5(a); Aff. Ex. 1.)

attorneys' fees, should ArcelorMittal employ an attorney to collect the unpaid balance owed. (Doc. 18, Amend. Compl. ¶18, Ex. 2, ¶ 15; Aff. Ex. 2, ¶ 15.). Also pursuant to the Agreements, interest accrues on the unpaid balance of the Invoices after the net due date at lesser of the prime rate plus three percent (3%), or the maximum allowable contractual interest rate under law. (*See* Amend. Compl. ¶ 19; Amend. Compl. Ex. 2, ¶ 15; Aff. ¶ 8; Aff. Ex 2, ¶ 15.)

Pursuant to the Guaranties, Brentwood and S&S Holdings have guaranteed the full and prompt payment when due of (i) “the purchase price and all other amounts owing on account of all goods and/or services ... provided by [ArcelorMittal] to [Lapeer];” (ii) “all costs of collect[ing] such purchase price and amounts owing including reasonable attorney[s]’[] fees;” and “(iii) interest on the foregoing at the rate of the lesser of 8% per annum or the highest rate allowed by applicable law.” (Doc. 18, Amend. Compl. Exs. 3, 4 ¶¶ 1, 3; Aff. ¶ 11; Aff. Exs. 4–5.)

According to ArcelorMittal’s books and records, the total principal amount due under the Invoices for products delivered and accepted by Lapeer is \$3,618,457.02. (Aff. ¶ 6.) Lapeer, Brentwood and S&S Holdings have not made any payments due and owing under the Invoices. (*Id.* ¶ 7.) The total amount of interest that has accrued on the unpaid balance of the invoices is \$134,047.18. (Aff. ¶ 9, *id.* Ex. 7.) Pursuant to the Guaranties, Brentwood and S&S Holdings are liable

for the amounts due and owing under the Invoices, including interest. ArcelorMittal, therefore, requests that judgment be entered in their favor and against Brentwood and S&S Holdings in the amount of \$3,752,504.20 with interest accruing thereon at a rate of 8% per annum. Arcelor further requests that the Court award ArcelorMittal its costs of this action and attorney's fees in an amount to be determined at the conclusion of this case.³

CONCLUSION

For the foregoing reasons, ArcelorMittal respectfully requests that this Court enter judgment in their favor and against Defendants Brentwood and S&S Holdings, for \$3,752,504.20 (\$3,618,457.02 in unpaid principal balance and \$134,047.18 in accrued interest); interest at the applicable rate until judgment is paid and satisfied in full; the costs of this action; attorneys' fees; and for such other and further relief as the Court deems just and proper.

Dated: January 9, 2020

Respectfully Submitted,

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³ Upon entry of default, ArcelorMittal's counsel will submit an affidavit substantiating the attorney's fees and costs incurred by ArcelorMittal on this case.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of January, 2020, I electronically filed the foregoing *PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS BRENTWOOD ADVISORY GROUP, LLC AND S&S HOLDINGS, LLC* with the Clerk of the Court, which will send notification of such filing to the counsel of record for Defendants 290 McCormick, LLC, Howmark, LLC and Lapeer Industries, Inc. utilizing the Court's CM-ECF system. The undersigned further certifies the foregoing *PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS BRENTWOOD ADVISORY GROUP, LLC AND S&S HOLDINGS, LLC* will be sent via overnight Federal Express to the other parties' registered agents who have all been previously served with the Complaint. Specifically:

Brentwood Advisory Group, LLC
c/o Daniel Schreiber
400 McCormick Dr.
Lapeer, MI 48446

S&S Holdings, LLC
c/o Daniel Schreiber
400 McCormick Dr.
Lapeer, MI 48446

Respectfully submitted,

/s/ Christopher J. Letkewicz